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20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

22 IN RE SEAGATE TECHNOLOGY LLC
23 LITIGATION

24 CONSOLIDATED ACTION

Case No. 3:16-cv-00523-JCS

**SEAGATE TECHNOLOGY LLC'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CERTAIN DOCUMENT
FILED IN CONJUNCTION WITH
SEAGATE'S OPPOSITION TO
PLAINTIFFS' RENEWED MOTION FOR
CLASS CERTIFICATION**

Second Consolidated Amended Complaint
filed: July 11, 2016

1 I. INTRODUCTION

2 Pursuant to Local Rule 79-5 of the Northern District of California Civil Local Rules,
 3 Seagate Technology LLC (“Seagate”) submits this administrative motion to seal portions of a
 4 document filed in conjunction with its Opposition to Plaintiffs’ Renewed Motion for Class
 5 Certification. Specifically, Seagate moves to seal two paragraphs of Exhibit 25 of the Declaration
 6 of Tenaya M. Rodewald in Support of Seagate Technology LLC’s Opposition to Plaintiffs’
 7 Renewed Motion for Class Certification (“Rodewald Declaration”). Exhibit 25 is excerpts from
 8 the Declaration of Donald Adams, PE in Support of Seagate’s Opposition to Plaintiffs’ Motion for
 9 Class Certification.

11 Document	Portion(s) to Be Sealed
12 Rodewald Declaration	Exhibit 25, ¶¶ 105-106

13 The authority and grounds for sealing portions of Exhibit 25, referred to herein as
 14 “Confidential Information,” are set forth below and in the Declaration of Allen Ng (“Ng
 15 Declaration”), ECF No. 184-1, attached as an exhibit to the Declaration of Daniel R. Fong, filed
 16 concurrently herewith. Pursuant to Civil L.R. 79-5, Seagate is submitting herewith redacted and
 17 unredacted versions of the exhibit at issue.

18 II. ARGUMENT

19 In this district, a party seeking to file a document under seal must satisfy a two-step
 20 process. The party must “(1) comply with Civil Local Rule 79-5; and (2) rebut the [] strong
 21 presumption in favor of access that applies to all documents other than grand jury transcripts or
 22 pre-indictment warrant materials.” *Gaudin v. Saxon Mortg. Servs.*, No. 11-cv-01663-JST, 2013
 23 2013 WL 2631074, at *1, 2 (N.D. Cal. June 11, 2013) (internal citations and quotations omitted).

24 The first prong requires that the party seeking to seal the document establish that (1) “the
 25 document or portions thereof is privileged or protectable as a trade secret or otherwise entitled to
 26 protection under the law; and (2) is narrowly tailored to seek sealing only of sealable material.”
 27 *Id.* (citation omitted).

1 “With respect to the second prong, the showing required for overcoming the strong
 2 presumption of access depends on the type of motion to which the document is attached.” *Id.*
 3 With regard to dispositive motions, the “presumption can be overcome only if the party presents
 4 ‘compelling reasons supported by specific factual findings that outweigh the general history of
 5 access and the public policies favoring disclosure.’” *Id.* (quoting *Kamakana v. City and Cnty. of*
 6 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). Such standard applies here, where the Court has
 7 determined that class certification “is effectively dispositive” of this litigation. Dkt. No. 182 at
 8 38:20-25 (citations omitted).

9 The information Seagate seeks to maintain under seal satisfies this two-part test. First,
 10 Seagate has narrowly tailored its request to seal only those documents that contain information
 11 that is “privileged or protectable as a trade secret or otherwise entitled to protection under the
 12 law.” L.R. 79-5(b). Second, there are compelling reasons to maintain the requested information
 13 under seal as Seagate faces a risk of undue competitive harm should the information be disclosed.

14 **A. Seagate’s Request Satisfies Local Rule 79-5**

15 Local Rule 79-5 permits the Court to seal information that constitutes a trade secret or is
 16 otherwise entitled to protection under the law. Courts in the Ninth Circuit define “trade secret” as
 17 “any formula, pattern, device or compilation of information which is used in one’s business, and
 18 which gives him an opportunity to obtain an advantage over competitors who do not know or use
 19 it.” *See, e.g., In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2013 WL 163779, at
 20 *1 (N.D. Cal. Jan. 15, 2013) (citing *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)).
 21 Further, Local Rule 79-5 protects from disclosure documents containing (1) product development
 22 and testing information, as well as a party’s product evaluation process; (2) confidential and
 23 sensitive business information, the disclosure of which could harm a party’s competitive
 24 advantage in the marketplace; and (3) customer identifying information. *See Kowalsky v. Hewlett-*
 25 *Packard Co.*, No. 5:10-cv-02176-LHK, 2012 WL 892427, at *2-5 (N.D. Cal. Mar. 14, 2012); *In re*
 26 *Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2014 WL 10537440, at *1-5 (N.D. Cal. Aug.
 27 6, 2014) (sealing documents that revealed manner in which party operated and collected data,

1 which could cause competitive harm to Google); *Gaudin*, 2013 WL 2631074, at *2 (“[C]ustomer
2 data and sensitive internal commercial information” protected under Local Rule 79-5).

3 Here, Seagate seeks to seal references to Seagate’s and its OEM customers’ specific non-
4 public business strategies on how to respond to potential product issues. Ng Decl., ¶ 18. As found
5 in *Kowalsky*, *In re Google*, and *Gaudin*, such information is sealable so long as the request is
6 narrowly tailored. See N.D. Cal. Civ. L.R. 79-5(b). Seagate’s request meets this requirement. It
7 is only seeking to seal two paragraphs of one exhibit out of thirty-five exhibits attached to the
8 Rodewald Declaration.

9 **B. Compelling Reasons Rebut the Presumption of Public Access Under the**
10 **Circumstances**

11 The presumption of public access to court records may be overcome by a showing of
12 compelling reasons that outweigh disclosure. *Kamakana*, 447 F.3d at 1178-79. In general,
13 compelling reasons exist when court files “might have become a vehicle for improper purposes.”
14 *In re High-Tech Employee Antitrust Litig.*, 2013 WL 163779, at *1 (citation and internal quotation
15 omitted). Courts have found that the “compelling reasons” standard is satisfied when disclosure of
16 the information sought to be sealed could result in competitive harm. See *In re Google Inc. Gmail*
17 *Litig.*, 2014 WL 10537440, at *4.

18 As discussed above, and as set forth in the Ng Declaration, the information Seagate seeks
19 to seal presents such a risk: it could be leveraged by Seagate’s competitors to interfere with
20 Seagate’s business relationships with its OEM customers to Seagate’s financial detriment, or
21 anticipate and thwart Seagate’s strategy, which would cause competitive harm to Seagate in the
22 marketplace. In addition, public disclosure would similarly damage the referenced OEM
23 customers themselves, who invest substantial resources to protect its non-public business and
24 public relations strategies. Such materials are sealable under the compelling reasons standard
25 because disclosure could result in use of such information for an improper purpose.

1 **III. CONCLUSION**

2 For the foregoing reasons, Seagate respectfully requests that this Court grant the Motion to
3 Seal portions of Exhibit 25 of the Rodewald Declaration.

4 Dated: November 16, 2018

5
6
7 By

/s/ Daniel R. Fong

DANIEL R. FONG

8
9 Attorneys for Defendant,
SEAGATE TECHNOLOGY LLC